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August 10, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: April 8, 2007

Case Number: TSO-0484

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted access authorization. For the reasons detailed below, access authorization should not be granted at this time.

I. BACKGROUND

The Individual has worked for a DOE contractor for most of the past thirty years and has held a clearance during portions of his career. He is now an applicant for a clearance.

At the time of the current application, the Individual had been arrested six times for driving under the influence of alcohol (DUI): in 1981 (twice), 1982, 1987, 1990, and 1995, and had been in several alcohol treatment programs over the years. In addition, in 1998, the Individual had an episode of major depression with psychotic features.

In July 2006, the local security office (LSO) conducted a personnel security interview (PSI) of the Individual. DOE Ex. 10. After the PSI, the LSO referred the Individual to a DOE consulting psychiatrist (the DOE Psychiatrist). In October 2006, the DOE Psychiatrist evaluated the Individual and issued a report. DOE Ex. 3 (the DOE Psychiatrist's Report).

The DOE Psychiatrist diagnosed the Individual as suffering from "major depression, recurrent, severe with psychotic features." DOE Ex. 3 at 10-13. The DOE Psychiatrist noted the 1998 episode, as well as a current, active episode. *Id.* at 15. As for the current depression, the DOE Psychiatrist stated, *inter alia*, that the Individual was obsessively worried that in the 2006 PSI, he minimized his level of alcohol consumption. *Id.* at 5, 8, 11. The DOE Psychiatrist reported that a future episode of major depression with psychotic features was "highly likely." *Id.* at 15.

The DOE Psychiatrist also diagnosed the Individual as suffering from alcohol abuse. DOE Ex. 3 at 12. The DOE Psychiatrist noted that in 1993 a DOE psychiatrist advised the Individual not to consume alcohol and that in 1998 and 2002 a second DOE psychiatrist diagnosed the Individual with alcohol abuse and recommended treatment and abstinence. *Id.* at 2-4. See also DOE Exs. 5, 7, 9 (2002, 1998, and 1993 psychiatric reports). The DOE Psychiatrist noted the Individual's assurances in 1995 and 2006 that he would not consume alcohol, his treatment programs, relapses, and history of elevated liver enzyme during his periods of drinking. *Id.* at 2-5, 12. Finally, the DOE Psychiatrist noted the Individual's report that he resumed drinking in 2004 - sometimes to excess, including an incident a month prior to the psychiatric interview. *Id.* at 5. The DOE Psychiatrist recommended a two-year treatment program and two years of sobriety. *Id.* at 11.

In January 2007, the LSO issued a Notification Letter, citing three security concerns. DOE Ex. 1. First, the Notification Letter cited the concern that the Individual has a mental illness that causes a defect in judgment and reliability. 10 C.F.R. § 708.8(h) (Criterion H). Second, the Notification Letter cited a concern that the Individual suffers from alcohol abuse. 10 C.F.R. § 708.8(j) (Criterion J). Third, the Notification Letter cited a concern that the Individual engaged in conduct that indicated that he is not honest, reliable, and trustworthy. 10 C.F.R. § 708.8(l) (Criterion L).

The Individual responded to the Notification Letter and requested a hearing. I was appointed to serve as the Hearing Officer. At the hearing, DOE Counsel presented one witness: the DOE psychiatrist. The Individual testified and presented three witnesses - his brother, a friend, and a co-worker/friend. The Individual submitted a letter from his treating psychiatrist, as well as evidence of membership in a religion-affiliated fraternal organization.

## II. THE HEARING

### A. The Individual

The Individual did not dispute the diagnoses. See, e.g., Tr. at 74-75, 85-86. Instead, he discussed his treatment. For his depression, the Individual sees a psychiatrist once every two months and a counselor every two weeks. *Id.* at 87-88. The Individual's psychiatrist has prescribed Seroquel and Wellbutrin, and the Individual is taking them. *Id.* at 52. The Individual discussed his current situation as follows:

"[The medication] seems to be working, because they'll be some days that I'm really happy and not depressed at all. I don't get depressed like [when] I had those first two depressions. And the psychotic features, I don't have them anymore.... I'm trying to improve daily, to stop alcohol abuse. I haven't abused alcohol since I saw [the DOE Psychiatrist] .... But I have had like a drink or two here and there.... And I think it is because I just like the taste of beer.

... AA counseling does work but I never got a sponsor. Maybe if I would get a sponsor I would be able to continue to - I mean, stop drinking for a longer period of time like I did when I was seeing [a particular psychiatrist].

*Id.* at 52-53. The Individual recognized the past effect of alcohol consumption on his liver as an incentive to stop drinking. *Id.* at 53.

In response to questions from the DOE Counsel, the Individual also testified concerning the Criterion L concerns. The Notification Letter cites a statement in the DOE Psychiatrist's report that the Individual expressed guilt for minimizing his alcohol use in the July 2006 PSI. The Notification Letter also cites other concerns - arrests or failure to disclose information on security questionnaires - concerning the period 1977 through 1992. The Individual's response is that "to the best of my knowledge, I've told the truth ...." Tr. at 69.

### B. The Individual's Brother

The Individual's brother testified that the Individual is "loyal" and "trustworthy." Tr. at 103. The Individual has "always been good with me and my family" and "if he says he's going to do something, he does it." *Id.* The Individual has "always been

honest" and "never given me a reason" to think otherwise. *Id.* The brother stated that the last time he saw the Individual drink was last week when the Individual had a beer. *Id.* at 105. When asked to estimate how often the Individual consumed alcohol, the brother stated "occasionally ... once a week, or sometimes he goes longer periods than that." *Id.* The brother believes that the main reason the Individual has reduced his drinking is because of "health issues." *Id.* The Individual is now "on the right medication" and "he was feeling a lot better." *Id.* at 107. The Individual "is cooperating with the doctors and it's gotten him better, and he knows it." *Id.* at 108.

#### C. The Individual's Friend

The Individual's friend has known the Individual and his brother for "a long time." *Tr.* at 95. The friend lives approximately a mile from the Individual and his brother and has seen the Individual approximately ten times in the last six months. *Id.* at 99-100.

The Individual's friend testified that the Individual is "reliable" and "trustworthy." *Tr.* at 96. When the friend asks for help the Individual "is always there." *Id.* The friend believes that the Individual hasn't been drinking for awhile. *Id.* at 97. The last time the friend saw the Individual drunk was about five or six years ago. *Id.* When asked whether he believes the Individual regrets not drinking, the friend stated, "No, he feels better now. He wasn't feeling good when he drank." *Id.* The friend was aware that the Individual had been depressed but believes that the Individual is feeling better. *Id.* at 98-99.

#### D. The Individual's Co-worker/Friend

The Individual's co-worker/friend has known the Individual for about seventeen years. *Tr.* at 57, 59.<sup>1</sup> They have worked together and gotten to be "pretty good friends" in the last five years and socialize in their homes. *Id.* at 57, 62. The co-worker/friend believes that the Individual is a trustworthy person, *id.* at 58,

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<sup>1</sup> The transcript reflects that, at the beginning of his testimony, the co-worker/friend testified that he had known the Individual "seven" years. *Tr.* at 57. Later, however, when asked if the co-worker/friend had ever been with the individual when alcohol was present, the co-worker/friend stated: "I don't know, maybe ten, 15 years ago, 20 years ago we may have been." *Id.* at 60. Accordingly, I believe that, when the co-worker/friend initially testified, he said "seven" by mistake or he said "seventeen" but it was mistakenly transcribed as "seven."

and, if confronted with a security problem, "would do the right thing," *id.* at 59.

The co-worker/friend has never seen the Individual come to work with a hangover, and the Individual is "not the type of guy to miss Mondays and Fridays." Tr. at 61-62. The last two times the co-worker/friend saw the Individual outside of work was at the co-worker's house. *Id.* at 65. Those visits were during the last six weeks, and no alcohol was served. *Id.* The last time the co-worker/friend had any alcohol with the Individual was about four years ago. *Id.* at 66.

#### E. The DOE Psychiatrist

At the beginning of the hearing, the DOE Psychiatrist discussed his evaluation of the Individual and the resulting report. Tr. at 9-33. At that time, the Individual's prognosis was "guarded." *Id.* at 39. Relevant factors were the severity of the illness - episodes of suicidality and psychotic features - and "some noncompliance with medications." *Id.* at 39. See also *id.* at 34. As for the diagnosis of alcohol abuse, the Individual needed treatment and abstinence: the Individual's long history of excessive alcohol use had a negative impact on (i) his clearance eligibility over his DOE career, and (ii) his physical and mental health. *Id.* at 41.

At the end of the hearing, the DOE Psychiatrist testified again. The DOE Psychiatrist testified that the Individual has "improved." Tr. at 112. The Individual is on the correct medication - an antidepressant and an antipsychotic. *Id.* at 113. The Individual believes in his counselor and the positive effects of the medication, recognizes that his prior thoughts were "odd," and sees that his mood is much better. *Id.* at 117. On the other hand, the DOE Psychiatrist testified that the Individual had not been completely compliant with his medications, citing the Individual's dosage adjustments prior to consulting his physician and the Individual's continued alcohol consumption while knowing it was contraindicated by one of his medications. *Id.* at 113-14. As for alcohol abuse, the Individual's decision to continue drinking puts him at "high risk" of relapsing to excessive drinking and can worsen his depression. *Id.* at 127. The DOE Psychiatrist continued to believe that the Individual needed two years of treatment and sobriety to establish adequate evidence of reformation and rehabilitation. *Id.* at 130.

### III. APPLICABLE STANDARD

Under Part 710, certain types of information raise a concern about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). See also Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

### IV. ANALYSIS

#### A. Criterion H Concern

A Criterion H concern arises when an individual is diagnosed with "an illness or mental condition" that "causes, or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h). The Individual recognizes that he has suffered two episodes of major depression with psychotic features. Accordingly, there is no question that the LSO correctly raised a Criterion H concern.

The Individual has clearly taken significant steps to address his condition. He sees a psychiatrist and a counselor, and he takes an antidepressant and an antipsychotic. He reports that they are working, and his report is corroborated by the testimony of others. See, e.g., Tr. at 52-53, 98-99, 107-08. The DOE Psychiatrist states that the Individual's prognosis is improved. *Id.* at 112.

I am unable to conclude, however, that, at this time, there is a "low probability of recurrence." Adjudicative Guideline 29(c). When the DOE Psychiatrist interviewed the Individual, he opined that the risk of another episode was "highly likely." DOE Ex. 3 at 11. At the time of the hearing, the DOE Psychiatrist was still concerned about the Individual's compliance with medication dosage, as well as the negative impact of his continued use of alcohol on the treatment for depression. Tr. at 112-14, 127. The Individual's psychiatrist did not address these concerns. In the view of the Individual's psychiatrist, the Individual has been stable for five months and his prognosis is "favorable as long as [he] continue[s] on the prescribed medications." Individual Ex. A (June 12, 2007 Letter). The Individual's psychiatrist did not specify the degree of risk associated with her "favorable" prognosis. Accordingly, despite the improvement in the Individual's mental condition, the Individual has not established that the probability of recurrence is low. Accordingly, I cannot conclude that the Individual has resolved the Criterion H concern.

#### B. Criterion J Concern

The Individual does not dispute the diagnosis of alcohol abuse. He recognizes that his prior alcohol consumption has been excessive and resulted in DUIs, damage to his liver, and other adverse effects. Accordingly, the LSO correctly raised a Criterion J concern.

In an effort to demonstrate reformation or rehabilitation, the Individual testified that he has reduced his alcohol consumption to moderate levels. Tr. at 52-53. He presented witnesses who corroborated that testimony. Id. at 61-66, 97-99, 105-08.

In this case, cessation of excessive drinking is not adequate evidence of reformation and rehabilitation. The DOE Psychiatrist opines that the risk of relapse is "high," see Tr. at 127, and that the Individual needs two years of treatment and sobriety. The DOE Psychiatrist's opinion is supported by the Individual's long history of alcohol-related problems, past psychiatric diagnoses, and the Individual's history of treatment and relapse. Accordingly, I cannot find that the Criterion J concern is resolved.

#### C. Criterion L Concern

Criterion L, in relevant part, refers to information indicating that an individual has "[e]ngaged in any unusual conduct" that tends to show that an individual "is not honest, reliable, or

trustworthy." 10 C.F.R. § 710.8(1). The Notification Letter cites arrests, including the Individual's DUI arrests, and states that the Individual failed to report one or more arrests on questionnaires in 1983, 1985, and 1992.<sup>2</sup> The Letter also states that on the 1992 questionnaire the Individual failed to report a 1983 job termination. Finally, the Notification Letter states that in the Individual's October 2006 psychiatric interview the Individual expressed worry that he had minimized his alcohol use during the 2006 PSI. Arrests and failures to provide fully responsive answers to the LSO constitute conduct raising a concern that an individual is not "honest, reliable, and trustworthy." Accordingly, the LSO correctly cited Criterion L concerns.

In determining whether the Individual has mitigated the concerns, I consider relevant factors. Factors include the nature, extent, and seriousness of the conduct, its recency, the age and maturity of the individual at the time of the conduct, and the likelihood of recurrence. 10 C.F.R. § 710.7(c). See also Adjudicative Guideline E(17)(c) ("passage of time").

Significant mitigating factors exist. Three of the arrests occurred in 1977, 1978, and 1980 - over twenty-five years ago - when the Individual was between 20 and 22 years old. The DOE has known about the 1980 arrest since 1983 - when the Individual disclosed it to DOE. DOE Ex. 24. The DOE has known about the 1977 and 1978 arrests since 1993, when they surfaced in a background investigation and were discussed with the Individual.<sup>3</sup> DOE Ex. 22. Although the Individual did not list a 1983 job termination on his 1992 questionnaire, he had reported the termination to DOE in 1983. DOE Ex. 24 at 2. Although the Individual did not list his 1981, 1982, and 1987 DUIs on his 1992 questionnaire, those arrests had previously been disclosed to DOE. DOE Exs. 21, 24.<sup>4</sup> As the foregoing indicates, one or more factors - (i) youth, (ii) the passage of time, and (iii) the Individual's prior discussion of the information with DOE - are significant mitigating factors that serve to resolve the concerns discussed above. Finally, the Notification Letter does not identify an actual inconsistency between the Individual's statements in the 2006 PSI and the 2006

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<sup>2</sup> The Notification Letter also states that the Individual failed to report arrests on a 1975 questionnaire. This appears to be a mistake, however, since the earliest arrest occurred in 1977.

<sup>3</sup> The Individual admitted the conduct at issue in the 1977 arrest but denied that the 1978 arrest was his.

<sup>4</sup> The Individual testified he thought the questionnaire was asking for arrests during the last five years; although the Individual's interpretation of the form was not correct, the fact that he had already reported the prior arrests and discussed them with DOE indicates that he was not attempting to conceal them.



psychiatric interview,<sup>5</sup> and the DOE Psychiatrist cited the Individual's obsessive ruminating "about did he accurately tell them the amount he was drinking" as an example of the Individual's unstable mental condition at that time. Tr. at 27-28. Given those circumstances, I have concluded that the Individual's ruminations at the 2006 psychiatric interview should not be considered evidence of dishonesty at the 2006 PSI. Based on the foregoing, I have concluded that the Criterion L concern is resolved.

#### V. CONCLUSION

Although the Individual has resolved the Criterion L concern set forth in the Notification Letter, the Individual has not resolved the Criteria H and J concerns. For that reason, I cannot conclude that granting the Individual access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual should not be granted access authorization at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth  
Hearing Officer  
Office of Hearings and Appeals

Date: August 10, 2007

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<sup>5</sup> During the July 2006 PSI, the Individual stated that he had stopped drinking two months before and that, in the twelve months before that, he had had a total of 12 to 15 beers. DOE Ex. 10 at 109-10. The DOE Psychiatrist's report refers to a PSI statement of a six-pack three times a week, DOE Ex. 3 at 5, but that statement referred to the period prior to the 2002 psychiatric interview, not the 2006 psychiatric interview, see DOE Ex. 10 at 102.